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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,452	08/25/2003	Shmuel Shaffer	062891.1123	5754

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DALLAS, TX 75201-2980

EXAMINER

TIEU, BENNY QUOC

ART UNIT	PAPER NUMBER
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2614

DATE MAILED: 09/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/649,452

Applicant(s)

SHAFFER ET AL.

Examiner

Benny Q. Tieu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 101*

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 32-37 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The term "computer program" is missing from the claim. Data structures not claimed as embodied in computer-readable media are descriptive material per se and are not statutory because they are not capable of causing functional change in the computer. See, e.g., *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention which permit the data structure's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory. Similarly, computer programs claimed as computer listings per se, i.e., the descriptions or expressions of the programs, are not physical "things." They are neither computer components nor statutory processes, as they are not "acts" being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer which permit the computer program's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a computer program is

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a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See Lowry, 32 F.3d at 1583-84, 32 USPQ2d at 1035. Accordingly, it is important to distinguish claims that define descriptive material per se from claims that define statutory inventions.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-5, 8, 9, 13-18, 21, 22, 26-29, 31-34, 36, and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Gisby (U.S. Patent No. 6,002,760).

Regarding claim 1, Gisby teaches a method for managing calls of an automatic call distributor, comprising:

receiving a call from a user over a first connection with a first endpoint of the user, the call comprising a request for service (incoming call from caller);

obtaining presence information of the user and associating the call with the presence information; placing the call in a queue until a suitable agent becomes available to provide the service to the user; establishing a virtual contact to hold a place of the call an order in the queue the first connection is terminated (column 5, lines 10-15);

establishing a second connection with the user; detecting the presence of the user associated with the second connection; and associating the second connection with the virtual contact using the detected presence of the user (column 5, lines 20-23).

Regarding claim 2, Gisby further teaches the method wherein establishing a second connection with the user comprises establishing a second connection with a second endpoint of the user (column 2, lines 46-50 and column 6, lines 57-61).

Regarding claim 3, Gisby further teaches the method wherein establishing a second connection with the user comprises establishing a second connection with the first endpoint of the user while using the presence information that has been established with the first endpoint (column 4, lines 60-67).

Regarding claim 4, Gisby further teaches the method wherein virtual contact is established after termination of the first connection, wherein the virtual contact comprises information regarding the presence of the user (column 6, lines 45-51).

Regarding claim 5, Gisby further teaches the method comprising: receiving notification from the user to terminate the first connection and hold the place of the call in the order in the queue; and wherein the virtual contact established after receipt of the notification (column 7, lines 37-49).

Regarding claims 8 and 9, Gisby further teaches the method wherein the notification received through dual tone multiple frequency (DTMF) signaling or through speech recognition (column 4, lines 35-40).

Regarding claim 13, Gisby further teaches the method comprising querying the user whether the user desires to wait for a suitable agent over the first connection or establish the

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virtual contact to hold a place the call in an order in the queue and terminate the first connection (column 2, lines 50-55).

Regarding claims 14-18, 21, 22, 26-29, 31-34, 36, and 37, the limitations of the claims are rejected for the same reasons as set forth in the rejection of claims 1-5, 8, 9, and 13 above, respectively.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 6, 7, 10-12, 19, 20, 23-25, 30, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gisby.

Regarding claims 6, 7, 10-12, 19, 20, 23-25, 30, and 35, Gisby fails to teach the method wherein the notification is received through instant messaging (IM) or through short message service (SMS) text messaging or updating the user of a status of the virtual contact in the queue through instant messaging or through short message service text messaging. However, Margolis teaches a virtual interaction queuing using internet protocols wherein a method includes queuing the call in a queue associated with a call center, obtaining a messaging preference of the caller, disconnecting the call, generating at least one IP-based message for the caller according to the caller's messaging preference, and transmitting the at least one IP-based message to the caller over an IP network, so as to begin a virtual interaction between the caller and the call center after the call is disconnected (paragraph [0011]). The message can be any form of an instant message or an SMS message (paragraph [0030]). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the use of IP-base message taught by Margolis to modify the teaching of Gisby in order to easy to communicate between the caller and the call center when the caller disconnects the call thereby making it more sufficient in re-establishing the communication based upon the availability of an agent. It is noted that claims 1-37 can be also rejected under 35 U.S.C. 102(e) as being anticipated by Margolis alone.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Jolissaint (U.S. Patent No. 5,040,208) teaches a coordinated voice and data display having temporary storage of transaction data (Fig. 2). Philonenko (U.S. Patent No. 6,801,520)

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teaches a queue prioritization based on competitive user input. Brown et al. (U.S. Patent Application Publication No. 2003/0108187) teach that if the caller prefers to receive an e-mail or instant message of the call hold queue information that the caller may then access at a caller accessible system or other computing system with network connectivity, then the VID is utilized to transmit an instant message or e-mail. A caller may then receive the instant message or access e-mail via a device where the caller is currently logged on (paragraph [0098]).

9. Any response to this action should be mailed to:

Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Or faxed to:

(571) 273-8300, (for formal communications intended for entry)

Or:

(571) 273-7490, (for informal or draft communications, please label  
"PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to:

Customer Service Window  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benny Q. Tieu whose telephone number is 571-272-7490. The examiner can normally be reached on Monday-Friday: 6:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wing Chan can be reached on 571-272-7493. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Benny Q. Tieu', with a stylized, cursive script.

Benny Q. Tieu  
Primary Examiner  
Art Unit 2614

September 17, 2006